IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.534 OF 1999

IN

WRIT PETITION NO.1204 OF 1995

WITH

APPEAL NO.535 OF 1999

IN

WRIT PETITION NO.528 OF 1996

Tukaram Ganpat Marathe ...Appellant

v/s

Life Insurance Corporation of India and anr. ...Respondents

Mr S.K. Talsania, Sr. Counsel with Mr K.S. Bapat for Appellant.

Ms S. Paranjpe with Mr O. Mohandas i/b M/s Little and Co. for Respondent No.1.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 1ST NOVEMBER 2007.

P.C. :-

1. Both the appeals are filed by the same appellant and both these appeals challenge the same judgment and order of the learned Single Judge of this Court. The relevant facts are that the present appellant - Marathe and Vasant Mandavkar were employed by the respondent - Life Insurance Corporation of India as Hamals in the Stationery Department. The appellant and Mandavkar were required to complete the work of packing stationery, to be despatched to Parbhani office of the respondent No.1. The appellant was required to complete the work of packing of stationery to be despatched to the Parbhani Branch. He was required to use a saw for the purpose of this work. He complained that the saw was not sharp enough, left the work and went out of the department. One Kalbhor, Record Clerk, was asked to complete the work. When Kalbhor was carrying out the work, the appellant and his co-employee Mandavkar came there and in a very aggressive manner questioned the propriety of Kalbhor carrying out the packing work. A common enquiry was held. The Enquiry Officer found both the employees guilty of the charges and both the employees were removed from service. In relation to Mandavkar, reference No.CGIT 2/28 of 1986

was made. The Tribunal which decided the reference in case of Mandavkar held that the enquiry held against Mandavkar was in compliance with the rules of natural justice and the findings of the Enquiry Officer were just and proper. It was also held that the reference was tenable in law and the Tribunal had jurisdiction to try the reference. The Tribunal also held that the action of the management was legal. Against that award imposing punishment, writ petition No.527 of 1992 was filed. That was decided by the learned Single Judge of this Court by judgment and order dated 15th November 1995 (Vasant T. Mandavkar v/s L.I.C. of India and ors., reported in 1996 (II) CLR 252). The judgment of the learned Single Judge was challenged before the Appeal Court. The appeal was registered as appeal No.123 of 1996 and that appeal came to be decided by the Appeal Court on 10th August 2006. By that order, the employee Mandavkar was treated as retired on reaching the age of superannuation without his service being terminated. He was also held entitled to all retiral benefits and he was also to be paid 50 % of the back wages. This order is passed by the Court by consent of the parties, but the order is in invitum.

2. So far as the present appellant is concerned, reference in relation to him was registered as CGIT 1/87 of 1990. That reference was decided by the Industrial

Tribunal by award dated 16th December 1994. The Industrial Tribunal held that the enquiry was proper, findings recorded by the Enquiry Officer were not to be called as perverse but the Industrial Tribunal held that the punishment imposed in exercise of jurisdiction under section 11-A of the Industrial Disputes Act is too harsh and therefore set aside the said punishment and instead, directed reinstatement in service till the date of superannuation with 50 % back wages. Against the award, two writ petitions were filed in this Court. Writ petition No.1204 of 1995 was filed by the employer challenging the order granting reinstatement with 50 % back wages and writ petition No.528 of 1996 was filed by the present appellant challenging the order of withholding 50 % of the back wages. The Court decided both the petitions by order dated 14th January 1999. The learned Single Judge allowed the petition filed by the employer and set aside the order passed by the Industrial Tribunal and the petition filed by the appellant was dismissed. Therefore, these two appeals have been filed challenging the order passed in the two petitions referred to above.

3. The learned counsel appearing for appellant submits that though there were separate charge-sheets issued to both the employees - Marathe and Mandavkar, the misconduct alleged against them was the same, the

incident in relation to which misconduct was alleged was also the same, the only difference was when Marathe and Mandavkar approached to the Record Clerk - Kalbhor, the present appellant - Marathe had a saw in his hand and it was alleged because of that saw, shirt of Record Clerk was torn. The learned counsel points out that the enquiry report in relation to both the employees was common and the finding was recorded by the Enquiry Officer that there is no sufficient evidence on record to show that the Record Clerk's shirt was torn by the appellant with the help of saw in his hand. The learned counsel submits that when the learned Single judge was hearing the petition referred to above, the judgment of the learned Single Judge in the case of Mandavkar referred to above, granting him reinstatement in service with 50 % back wages, though pointed out was not even referred to. According to him, it was relevant because the learned Single Judge in his judgment had held that the finding recorded on charge Nos.1 and 2 were perverse. Perusal of the enquiry report shows that common charges were framed against both the employees and therefore, the findings recorded in the order of writ petition filed by Mandavkar were relevant to be considered by the learned Single Judge deciding the writ petition filed by Marathe before recording a finding that the findings recorded by the Enquiry Officer were not perverse. The learned counsel submits that the

result is that now in relation to the same report and the charges, there are two findings recorded by the two learned Single Judges of this Court, one holding that the findings are perverse and the other holding that the findings are not perverse. The difference being that in so far as the finding recorded by the learned Single Judge who decided the writ petition filed by Mandavkar is that when he decided that the charges were perverse, reference in Marathe's case was still pending. According to the learned counsel, the judgment of the learned Single Judge impugned in the appeal is liable to be set aside. He further submits that now the judgment of the learned Single Judge in Mandavkar's case has been confirmed in appeal by order dated 10th August 2006 and therefore, it will be appropriate for this Court to follow the same course of action in this case also. On the other hand, the learned counsel appearing for respondents submits that the conduct attributed to the two employees was different in the sense that there was additional allegation against the present appellant that he was carrying saw in his hand. The learned counsel submits that therefore, the course of action and the punishment which is imposed in relation to Mandavkar cannot be followed and the same punishment cannot be imposed in relation to the present appellant. She further submits that when writ petitions were decided by the learned Single Judge, appeal against the judgment of

the learned Single Judge who decided Mandavkar's case was pending before the Division Bench and therefore as operation of that judgment was stayed by the Division Bench in appeal, the learned Single Judge was justified in not considering the judgment of the learned Single Judge in Mandavkar's case. The learned counsel also took us through the enquiry report, the order of the Tribunal and the order of the learned Single Judge to contend that considering the misconduct, the Tribunal was not justified in interfering with the punishment. The learned counsel also relies on the judgment of the Supreme Court in the case of J.K. Synthetics Ltd. v/s K.P. Agrawal and anr., reported in (2007) 2 SCC 433 to contend that the Tribunal was not justified in interfering with the punishment in exercise of its power under section 11-A of the Industrial Disputes Act.

4. Now in the light of these rival submissions if the record of the case is perused, it becomes clear that though there were different charge-sheets served on the two employees, there was common enquiry held against both of them. Perusal of the enquiry report shows that on the basis of two charge-sheets, the Enquiry Officer framed common charges against both the employees. Perusal of the enquiry report shows that so far as the distinguishing feature pointed out by the learned counsel appearing for respondents between the charges

against the two employees viz. Marathe was carrying a saw in his hand is concerned, as per the report of the Enquiry Officer himself, the evidence on record does not prove that the shirt of the Record Clerk - Kalbhor was torn by Marathe's saw. According to the Enquiry Officer, though Marathe was carrying the saw, there is no evidence to show that he used it. Therefore, practically the charges framed against both the employees were identical. Perusal of the judgment of the learned single Judge in Mandavkar's case shows that the learned Single Judge has examined the enquiry report and the evidence minutely and has held that the findings recorded by the Enquiry Officer are perverse. In so far as the judgment of the learned Single Judge in the case of Marathe is concerned, it shows that though writ petition was filed by Marathe challenging the finding recorded by the Industrial Court that the findings recorded by the Enquiry Officer are not perverse, the judgment of the learned Single Judge shows that the evidence on record has not been considered in detail. Perusal of paragraph 12 of the judgment of the learned Single Judge shows that the learned Single Judge has recorded a finding contrary to the finding of the Enquiry Officer. The learned Single Judge has observed thus :-

"The said employee, taking malice against him,

as he was doing their work, picked up quarrel with Kalbhor and they questioned him as to why he was interfering with their work and as such they were engaged in some heated altercation with Kalbhor, Kalbhor does maintain that the present employee Marathe did have a saw in his hand and therefore, it was this saw which has resulted in the said tearing of his shirt."

. Now, this finding that the saw in the hands of Marathe torn the shirt of the Record Clerk is contrary to the finding of the Enquiry Officer who has recorded that there is no sufficient evidence to prove that because of Marathe's saw, the shirt of Record Clerk was torn. The learned Single Judge has not discussed the evidence on record. in our opinion therefore, the finding recorded by the learned Single Judge that the findings recorded by the Enquiry Officer are not perverse are incapable of being accepted. In our opinion, the finding recorded by the learned Single Judge in Marathe's case which has been confirmed by the Appeal Court in relation to the same enquiry report is more in accordance with law and evidence on record. In view of this finding and in view of the order passed by the Appeal Court in Marathe's case, we are left with no alternative but to follow the judgment of the learned Single Judge in Marathe's case. In the result

therefore, both the appeals are disposed off, the judgment and order passed by the learned Single Judge is set aside. The order passed by the Industrial Tribunal is restored. No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)